



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2013-0040; FRL– 9928-05-Region-4]

Approval and Promulgation of Implementation Plans; Florida Infrastructure Requirements for the 2008 Lead National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve portions of the October 14, 2011, State Implementation Plan (SIP) submission, provided by the State of Florida, through the Department of Environmental Protection (FL DEP) for inclusion into the Florida SIP. This proposal pertains to the Clean Air Act (CAA or the Act) infrastructure requirements for the 2008 Lead national ambient air quality standards (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an “infrastructure” SIP. FL DEP certified that the Florida SIP contains provisions that ensure the 2008 Lead NAAQS is implemented, enforced, and maintained in Florida. With the exception of provisions pertaining to prevention of significant deterioration (PSD) permitting, EPA is proposing to approve Florida’s infrastructure submission, provided to EPA on October 14, 2011, as satisfying the required infrastructure elements for the 2008 Lead NAAQS.

DATES: Written comments must be received on or before [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2013-0040, by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.
2. E-mail: R4-ARMS@epa.gov.
3. Fax: (404) 562-9019.
4. Mail: "EPA-R04-OAR-2013-0040," Air Regulatory Management Section, (formerly the Regulatory Development Section), Air Planning and Implementation Branch, (formerly the Air Planning Branch), Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960.
5. Hand Delivery or Courier: Lynorae Benjamin, Chief, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R04-OAR-2013-0040. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business

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Docket: All documents in the electronic docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at

all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Zuri Farnago, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9152. Mr. Farnago can be reached via electronic mail at farngalo.zuri@epa.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Background**
 - II. What Elements are Required Under Sections 110(a)(1) and (2)?**
 - III. What is EPA's Approach to the Review of Infrastructure SIP Submissions?**
 - IV. What is EPA's Analysis of how Florida Addressed the Elements of Sections 110(a)(1) and (2) "Infrastructure" Provisions?**
 - V. Proposed Action**
 - VI. Statutory and Executive Order Reviews**
-
- I. Background**

On October 5, 1978, EPA promulgated primary and secondary NAAQS for Lead under section 109 of the Act. *See* 43 FR 46246. Both primary and secondary standards were set at a level of 1.5 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$), measured as Lead in total suspended particulate matter (Pb-TSP), not to be exceeded by the maximum arithmetic mean concentration averaged over a calendar quarter. This standard was based on the 1977 Air Quality Criteria for Lead (USEPA, August 7, 1977). On November 12, 2008 (75 FR 81126), EPA issued a final rule to revise the primary and secondary Lead NAAQS. The primary and secondary Lead NAAQS were revised to $0.15 \mu\text{g}/\text{m}^3$. By statute, SIPs meeting the requirements of sections 110(a)(1) and (2) are to be submitted by states within three years after promulgation of a new or revised NAAQS. Sections 110(a)(1) and (2) require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the NAAQS. States were required to submit such SIPs to EPA no later than October 15, 2011, for the 2008 Lead NAAQS.¹

Today's action is proposing to approve Florida's infrastructure SIP submission for the applicable requirements of the 2008 Lead NAAQS, with the exception of the preconstruction PSD permitting requirements for major sources of sections 110(a)(2)(C), prong 3 of D(i), and (J). With respect to Florida's infrastructure SIP submission related to the provisions pertaining to the

¹ In these infrastructure SIP submissions states generally certify evidence of compliance with sections 110(a)(1) and (2) of the CAA through a combination of state regulations and statutes, some of which have been incorporated into the federally-approved SIP. In addition, certain federally-approved, non-SIP regulations may also be appropriate for demonstrating compliance with sections 110(a)(1) and (2). Throughout this rulemaking, unless otherwise indicated, regulations referenced herein as the "Florida Administrative Code (F.A.C.)" have been approved into Florida's federally-approved SIP. Florida state statutes, referenced as "Florida Statue (F.S.)" herein are not a part of the SIP unless otherwise indicated.

PSD permitting requirements for major sources of section 110(a)(2)(C), prong 3 of D(i), and (J), EPA's approval of these elements was published on March 18, 2015 (80 FR 14019). For the aspects of Florida's submittal proposed for approval today, EPA notes that the Agency is not approving any specific rule, but rather proposing that Florida's already approved SIP meets certain CAA requirements.

II. What Elements are Required Under Sections 110(a)(1) and (2)?

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains. In the case of the 2008 Lead NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with the 1978 Lead NAAQS.

Section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for "infrastructure" SIP requirements related to a newly established or revised NAAQS. As mentioned above, these requirements include SIP infrastructure elements such as modeling, monitoring, and emissions inventories that

are designed to assure attainment and maintenance of the NAAQS. The requirements that are the subject of this proposed rulemaking are listed below² and in EPA's October 14, 2011, memorandum entitled "Guidance on Infrastructure State Implementation Plan (SIP) Elements Required Under Sections 110(a)(1) and 110(a)(2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS)" (2011 Lead Infrastructure SIP Guidance).

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement, prevention of significant deterioration (PSD) and new source review (NSR).³
- 110(a)(2)(D): Interstate and international transport provisions.
- 110(a)(2)(E): Adequate personnel, funding, and authority.
- 110(a)(2)(F): Stationary source monitoring and reporting.
- 110(a)(2)(G): Emergency Powers.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(I): Nonattainment area plan or plan revision under part D.⁴

² Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (1) submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA, and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. Today's proposed rulemaking does not address infrastructure elements related to section 110(a)(2)(I) or the nonattainment planning requirements of 110(a)(2)(C).

³ This rulemaking only addresses requirements for this element as they relate to attainment areas.

⁴ As mentioned above, this element is not relevant to today's proposed rulemaking.

- 110(a)(2)(J): Consultation with government officials, public notification, and PSD and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

III. What is EPA’s Approach to the Review of Infrastructure SIP Submissions?

EPA is acting upon the SIP submission from Florida that addresses the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2008 Lead NAAQS. Pursuant to section 110(a)(1), states must make SIP submissions “within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),” and these SIP submissions are to provide for the “implementation, maintenance, and enforcement” of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA’s taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that “each such plan” submission must address.

EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as “infrastructure SIP” submissions. Although the term “infrastructure SIP” does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy

other SIP requirements under the CAA, such as “nonattainment SIP” or “attainment plan SIP” submissions to address the nonattainment planning requirements of part D of title I of the CAA, “regional haze SIP” submissions required by EPA rule to address the visibility protection requirements of CAA section 169A, and nonattainment new source review permit program submissions to address the permit requirements of CAA, title I, part D.

Section 110(a)(1) addresses the timing and general requirements for infrastructure SIP submissions, and section 110(a)(2) provides more details concerning the required contents of these submissions. The list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive program provisions, and some of which pertain to requirements for both authority and substantive program provisions.⁵ EPA therefore believes that while the timing requirement in section 110(a)(1) is unambiguous, some of the other statutory provisions are ambiguous. In particular, EPA believes that the list of required elements for infrastructure SIP submissions provided in section 110(a)(2) contains ambiguities concerning what is required for inclusion in an infrastructure SIP submission.

The following examples of ambiguities illustrate the need for EPA to interpret some section 110(a)(1) and section 110(a)(2) requirements with respect to infrastructure SIP submissions for a given new or revised NAAQS. One example of ambiguity is that section

⁵ For example: Section 110(a)(2)(E)(i) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a SIP-approved program to address certain sources as required by part C of title I of the CAA; and section 110(a)(2)(G) provides that states must have legal authority to address emergencies as well as contingency plans that are triggered in the event of such emergencies.

110(a)(2) requires that “each” SIP submission must meet the list of requirements therein, while EPA has long noted that this literal reading of the statute is internally inconsistent and would create a conflict with the nonattainment provisions in part D of title I of the Act, which specifically address nonattainment SIP requirements.⁶ Section 110(a)(2)(I) pertains to nonattainment SIP requirements and part D addresses when attainment plan SIP submissions to address nonattainment area requirements are due. For example, section 172(b) requires EPA to establish a schedule for submission of such plans for certain pollutants when the Administrator promulgates the designation of an area as nonattainment, and section 107(d)(1)(B) allows up to two years, or in some cases three years, for such designations to be promulgated.⁷ This ambiguity illustrates that rather than apply all the stated requirements of section 110(a)(2) in a strict literal sense, EPA must determine which provisions of section 110(a)(2) are applicable for a particular infrastructure SIP submission.

Another example of ambiguity within sections 110(a)(1) and 110(a)(2) with respect to infrastructure SIPs pertains to whether states must meet all of the infrastructure SIP requirements in a single SIP submission, and whether EPA must act upon such SIP submission in a single action. Although section 110(a)(1) directs states to submit “a plan” to meet these requirements, EPA interprets the CAA to allow states to make multiple SIP submissions separately addressing

⁶ See, e.g., “Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_x SIP Call; Final Rule,” 70 FR 25162, at 25163 – 65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

⁷ EPA notes that this ambiguity within section 110(a)(2) is heightened by the fact that various subparts of part D set specific dates for submission of certain types of SIP submissions in designated nonattainment areas for various pollutants. Note, e.g., that section 182(a)(1) provides specific dates for submission of emissions inventories for the ozone NAAQS. Some of these specific dates are necessarily later than three years after promulgation of the new or revised NAAQS.

infrastructure SIP elements for the same NAAQS. If states elect to make such multiple SIP submissions to meet the infrastructure SIP requirements, EPA can elect to act on such submissions either individually or in a larger combined action.⁸ Similarly, EPA interprets the CAA to allow it to take action on the individual parts of one larger, comprehensive infrastructure SIP submission for a given NAAQS without concurrent action on the entire submission. For example, EPA has sometimes elected to act at different times on various elements and sub-elements of the same infrastructure SIP submission.⁹

Ambiguities within sections 110(a)(1) and 110(a)(2) may also arise with respect to infrastructure SIP submission requirements for different NAAQS. Thus, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS. The states' attendant infrastructure SIP submissions for each NAAQS therefore could be different. For example, the monitoring requirements that a state might need to meet in its infrastructure SIP submission for purposes of section 110(a)(2)(B) could be very different for different pollutants because the content and scope of a state's

⁸ See, e.g., "Approval and Promulgation of Implementation Plans; New Mexico; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) Permitting," 78 FR 4339 (January 22, 2013) (EPA's final action approving the structural PSD elements of the New Mexico SIP submitted by the State separately to meet the requirements of EPA's 2008 PM_{2.5} NSR rule), and "Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Infrastructure and Interstate Transport Requirements for the 2006 PM_{2.5} NAAQS," (78 FR 4337) (January 22, 2013) (EPA's final action on the infrastructure SIP for the 2006 PM_{2.5} NAAQS).

⁹ On December 14, 2007, the State of Tennessee, through the Tennessee Department of Environment and Conservation, made a SIP revision to EPA demonstrating that the State meets the requirements of sections 110(a)(1) and (2). EPA proposed action for infrastructure SIP elements (C) and (J) on January 23, 2012 (77 FR 3213) and took final action on March 14, 2012 (77 FR 14976). On April 16, 2012 (77 FR 22533) and July 23, 2012 (77 FR 42997), EPA took separate proposed and final actions on all other section 110(a)(2) infrastructure SIP elements of Tennessee's December 14, 2007 submittal.

infrastructure SIP submission to meet this element might be very different for an entirely new NAAQS than for a minor revision to an existing NAAQS.¹⁰

EPA notes that interpretation of section 110(a)(2) is also necessary when EPA reviews other types of SIP submissions required under the CAA. Therefore, as with infrastructure SIP submissions, EPA also has to identify and interpret the relevant elements of section 110(a)(2) that logically apply to these other types of SIP submissions. For example, section 172(c)(7) requires that attainment plan SIP submissions required by part D have to meet the “applicable requirements” of section 110(a)(2). Thus, for example, attainment plan SIP submissions must meet the requirements of section 110(a)(2)(A) regarding enforceable emission limits and control measures and section 110(a)(2)(E)(i) regarding air agency resources and authority. By contrast, it is clear that attainment plan SIP submissions required by part D would not need to meet the portion of section 110(a)(2)(C) that pertains to the PSD program required in part C of title I of the CAA, because PSD does not apply to a pollutant for which an area is designated nonattainment and thus subject to part D planning requirements. As this example illustrates, each type of SIP submission may implicate some elements of section 110(a)(2) but not others.

Given the potential for ambiguity in some of the statutory language of section 110(a)(1) and section 110(a)(2), EPA believes that it is appropriate to interpret the ambiguous portions of section 110(a)(1) and section 110(a)(2) in the context of acting on a particular SIP submission. In other words, EPA assumes that Congress could not have intended that each and every SIP

¹⁰ For example, implementation of the 1997 PM_{2.5} NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

submission, regardless of the NAAQS in question or the history of SIP development for the relevant pollutant, would meet each of the requirements, or meet each of them in the same way. Therefore, EPA has adopted an approach under which it reviews infrastructure SIP submissions against the list of elements in section 110(a)(2), but only to the extent each element applies for that particular NAAQS.

Historically, EPA has elected to use guidance documents to make recommendations to states for infrastructure SIPs, in some cases conveying needed interpretations on newly arising issues and in some cases conveying interpretations that have already been developed and applied to individual SIP submissions for particular elements.¹¹ EPA issued the 2011 Lead Infrastructure SIP Guidance¹² to provide states with up-to-date guidance for Lead infrastructure SIPs. Within this guidance, EPA describes the duty of states to make infrastructure SIP submissions to meet basic structural SIP requirements within three years of promulgation of a new or revised NAAQS. EPA also made recommendations about many specific subsections of section 110(a)(2) that are relevant in the context of infrastructure SIP submissions. The guidance also discusses the substantively important issues that are germane to certain subsections of section 110(a)(2). Significantly, EPA interprets sections 110(a)(1) and 110(a)(2) such that infrastructure SIP submissions need to address certain issues and need not address others.

¹¹ EPA notes, however, that nothing in the CAA requires EPA to provide guidance or to promulgate regulations for infrastructure SIP submissions. The CAA directly applies to states and requires the submission of infrastructure SIP submissions, regardless of whether or not EPA provides guidance or regulations pertaining to such submissions. EPA elects to issue such guidance in order to assist states, as appropriate.

¹² “Guidance on Infrastructure State Implementation Plan (SIP) Elements Required under Clean Air Act Sections 110(a)(1) and 110(a)(2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS),” Memorandum from Stephen D. Page, October 14, 2011.

Accordingly, EPA reviews each infrastructure SIP submission for compliance with the applicable statutory provisions of section 110(a)(2), as appropriate.¹³

EPA's approach to review of infrastructure SIP submissions is to identify the CAA requirements that are logically applicable to that submission. EPA believes that this approach to the review of a particular infrastructure SIP submission is appropriate, because it would not be reasonable to read the general requirements of section 110(a)(1) and the list of elements in 110(a)(2) as requiring review of each and every provision of a state's existing SIP against all requirements in the CAA and EPA regulations merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts. These provisions, while not fully up to date, nevertheless may not pose a significant problem for the purposes of "implementation, maintenance, and enforcement" of a new or revised NAAQS when EPA evaluates adequacy of the infrastructure SIP submission. EPA believes that a better approach is for states and EPA to focus attention on those elements of section 110(a)(2) of the CAA most likely to warrant a specific SIP revision due to the promulgation of a new or revised NAAQS or other factors.

¹³ Although not intended to provide guidance for purposes of infrastructure SIP submissions for the 2008 Lead NAAQS, EPA notes, that following the 2011 Lead Infrastructure SIP Guidance, EPA issued the "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)." Memorandum from Stephen D. Page, September 13, 2013. This 2013 guidance provides recommendations for air agencies' development and the EPA's review of infrastructure SIPs for the 2008 ozone primary and secondary NAAQS, the 2010 primary nitrogen dioxide (NO₂) NAAQS, the 2010 primary sulfur dioxide (SO₂) NAAQS, and the 2012 primary fine particulate matter (PM_{2.5}) NAAQS, as well as infrastructure SIPs for new or revised NAAQS promulgated in the future.

Finally, EPA believes that its approach with respect to infrastructure SIP requirements is based on a reasonable reading of sections 110(a)(1) and 110(a)(2) because the CAA provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow EPA to take appropriately tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a “SIP call” whenever the Agency determines that a state’s SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or to otherwise comply with the CAA.¹⁴ Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.¹⁵ Significantly, EPA’s determination that an action on a state’s infrastructure SIP submission is not the appropriate time and place to address all potential existing SIP deficiencies does not preclude EPA’s subsequent reliance on provisions in section 110(a)(2) as part of the basis for action to correct those deficiencies at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director’s discretion provisions in the course of acting on an infrastructure SIP submission, EPA believes that section

¹⁴ For example, EPA issued a SIP call to Utah to address specific existing SIP deficiencies related to the treatment of excess emissions during SSM events. See “Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revisions,” 74 FR 21639 (April 18, 2011).

¹⁵ EPA has used this authority to correct errors in past actions on SIP submissions related to PSD programs. See “Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule,” 75 FR 82536 (December 30, 2010). EPA has previously used its authority under CAA section 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, e.g., 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062 (November 16, 2004) (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

110(a)(2)(A) may be among the statutory bases that EPA relies upon in the course of addressing such deficiency in a subsequent action.¹⁶

IV. What is EPA's Analysis of How Florida Addressed the Elements of Sections

110(a)(1) and (2) "Infrastructure" Provisions?

The Florida infrastructure submission addresses the provisions of sections 110(a)(1) and (2) as described below.

1. 110(a)(2)(A) – Emission limits and other control measures: Florida's infrastructure submission cites provisions of the Florida Administrative Code (F.A.C.) that provide FL DEP with the necessary authority to adopt and enforce air quality controls, which include enforceable emission limitations and other control measures. Chapters 62-204, F.A.C., *Air Pollution Control Provisions*; 62-210, F.A.C., *Stationary Sources – General Requirements*; 62-212, F.A.C. *Stationary Source-Preconstruction Review*; 62-296, F.A.C., *Stationary Sources – Emissions Standards*; and 62-297, F.A.C., *Stationary Sources-Emissions Monitoring*, establish emission limits for Lead and address the required control measures, means and techniques for compliance with the 2008 Lead NAAQS respectively. EPA has made the preliminary determination that the above provisions and Florida's practices are adequate to protect the 2008 Lead NAAQS in the State. Accordingly, EPA is proposing to approve Florida's infrastructure SIP submission with

¹⁶ See, e.g., EPA's disapproval of a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). See, e.g., 75 FR 42342 at 42344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (Jan. 26, 2011) (final disapproval of such provisions).

respect to section 110(a)(2)(A).

In this action, EPA is not proposing to approve or disapprove any existing State provisions with regard to excess emissions during startup, shutdown, and malfunction (SSM) of operations at a facility. EPA believes that a number of states have SSM provisions which are contrary to the CAA and existing EPA guidance, “State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown” (September 20, 1999), and the Agency plans to address such state regulations in the future.¹⁷ In the meantime, EPA encourages any state having a deficient SSM provision to take steps to correct it as soon as possible.

Additionally, in this action, EPA is not proposing to approve or disapprove any existing State rules with regard to director’s discretion or variance provisions. In the meantime, EPA encourages any state having a director’s discretion or variance provision which is contrary to the CAA and EPA guidance to take steps to correct the deficiency as soon as possible.

2. 110(a)(2)(B) – Ambient air quality monitoring/data system: SIPs are required to provide for the establishment and operation of ambient air quality monitors; the compilation and analysis of ambient air quality data; and the submission of these data to EPA upon request. Chapters 62-204, F.A.C., *Air Pollution Control Provisions*, 62-210, F.A.C., *Stationary Sources – General Requirements*, and 62-212, F.A.C., *Stationary Sources – Preconstruction Review* of the Florida SIP, along with the Florida Network Description and Ambient Air Monitoring Network Plan, provide for an ambient air quality monitoring system in the State. Annually, States develop and

¹⁷ On February 22, 2013, EPA published a proposed action in the Federal Register entitled, “State Implementation Plans: Response to Petition for Rulemaking; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction; Proposed Rule.” 78 FR 12459.

submit to EPA for approval statewide ambient monitoring network plans consistent with the requirements of 40 CFR Parts 50, 53, and 58. The annual network plan involves an evaluation of any proposed changes to the monitoring network, and includes the annual ambient monitoring network design plan and a certified evaluation of the agency's ambient monitors and auxiliary support equipment.¹⁸ The latest monitoring network plan for Florida was submitted to EPA in May 2014 and on November 7, 2014, EPA approved this plan. Florida's approved monitoring network plan can be accessed at www.regulations.gov using Docket ID No. EPA-R04-OAR-2013-0040. EPA has made the preliminary determination that Florida's SIP and practices are adequate for the ambient air quality monitoring and data system requirements related to the 2008 Lead NAAQS.

3. 110(a)(2)(C) - Program for enforcement, Prevention of Significant Deterioration (PSD) and new source review (NSR): This element consists of three sub-elements; enforcement, state-wide regulation of new and modified minor sources and minor modifications of major sources; and preconstruction permitting of major sources and major modifications in areas designated attainment or unclassifiable for the subject NAAQS as required by CAA title I part C (i.e., the major source PSD program). In this action EPA is proposing to approve Florida's infrastructure SIP submission for the 2008 Lead NAAQS with respect to the general requirement of 110(a)(2)(C) to include a program in the SIP that provides for enforcement of emission limits and control measures and regulation of minor sources and minor modifications as well as the

¹⁸ On occasion, proposed changes to the monitoring network are evaluated outside of the network plan approval process in accordance with 40 CFR Part 58.

enforcement of lead emission limits to assist in the protection of air quality in nonattainment, attainment or unclassifiable areas. This is established in Chapters 62-210, F.A.C., *Stationary Sources – General Requirements, Section 200 – Definitions*; and 62-212, F.A.C., *Stationary Sources – Preconstruction Review, Section 400 - Prevention of Significant Deterioration*..

Enforcement: FL DEP’s SIP approved regulations provide for enforcement of lead emission limits and control measures and construction permitting for new or modified stationary lead sources.

Preconstruction PSD Permitting for Major Sources: With respect to Florida’s infrastructure SIP submission related to the preconstruction PSD permitting requirements for major sources of section 110(a)(2)(C), EPA approved this element at 80 FR 14019, published on March 18, 2015, and thus is not proposing any action today regarding these requirements.

Regulation of minor sources and modifications: Section 110(a)(2)(C) also requires the regulation of new and modified minor sources and minor modifications. FL DEP’s SIP-approved rule chapters 62-204, 62-210, and 62-212, F.A.C., collectively establish a preconstruction, new source permitting program that meets the NNSR requirements under parts C and D of the CAA for pollutant-emitting activities that contribute to lead concentrations in the ambient air and also provide for the enforcement of lead emission limits and control measures. FL DEP’s SIP-approved preconstruction review program applies to minor sources and modifications as well as major stationary sources and modifications (as discussed above).

EPA has made the preliminary determination that Florida’s SIP and practices are adequate for enforcement of control measures and regulation of minor sources and modifications related to the 2008 Lead NAAQS.

4. 110(a)(2)(D)(i)(I) and (II), and 110(a)(2)(D)(ii) – Interstate and International transport

provisions: Section 110(a)(2)(D)(i) has two components; 110(a)(2)(D)(i)(I) and 110(a)(2)(D)(i)(II). Each of these components have two subparts resulting in four distinct components, commonly referred to as “prongs,” that must be addressed in infrastructure SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), are provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state (“prong 1”), and interfering with maintenance of the NAAQS in another state (“prong 2”). The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), are provisions that prohibit emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state (“prong 3”), or to protect visibility in another state (“prong 4”). Section 110(a)(2)(D)(ii) Interstate and International transport provisions requires SIPs to include provisions insuring compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement.

110(a)(2)(D)(i)(I) – prongs 1 and 2: Section 110(a)(2)(D)(i) requires infrastructure SIP submissions to include provisions prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment, or interfering with maintenance, of the NAAQS in another state.

The physical properties of lead prevent lead emissions from experiencing that same travel or formation phenomena as PM_{2.5} and ozone for interstate transport as outlined in prongs 1 and 2. More specifically, there is a sharp decrease in the lead concentrations, at least in the coarse

fraction, as the distance from a lead source increases. EPA believes that the requirements of prongs 1 and 2 can be satisfied through a state's assessment as to whether a lead source located within its State in close proximity to a state border has emissions that contribute significantly to the nonattainment or interfere with maintenance of the NAAQS in the neighboring state. For example, EPA's experience with the initial lead designations suggests that sources that emit less than 0.5 tpy generally appear unlikely to contribute significantly to the nonattainment in another state. EPA's experience also suggest that sources located more than two miles from the state border generally appear unlikely to contribute significantly to the nonattainment in another state. Florida has two lead sources that have emissions of lead over 0.5 tons per year (tpy) but these sources are located well beyond two miles from the State border.¹⁹ Thus, EPA believes there are no sources in Florida that are likely to contribute significantly to the nonattainment or interfere with maintenance of the NAAQS in another state. Therefore, EPA has made the preliminary determination that Florida's SIP meets the requirements of section 110(a)(2)(D)(i)(I).

110(a)(2)(D)(i)(II) – prong 3: With respect to Florida's infrastructure SIP submission related to the interstate transport requirements of section 110(a)(2)(D)(i)(II) (prong 3), EPA approved this element at 80 FR 14019, published on March 18, 2015, and thus is not proposing any action today regarding these requirements.

110(a)(2)(D)(i)(II) – prong 4: With regard to section 110(a)(2)(D)(i)(II), the visibility sub-element, referred to as prong 4, significant impacts from lead emissions from stationary sources

¹⁹ There are two facilities in Florida that have Lead emissions greater than 0.5 tpy. The facilities are EnviroFocus Technologies and GulfPower Company Crist power plant. EnviroFocus Technologies is located at 1901 N 66th St, Tampa, FL 33619, which about 150 miles from the border of Georgia. GulfPower Company Crist power plant is located in Escambia County 11999 Pate Street, Pensacola, FL, approximately 10 miles from Alabama.

are expected to be limited to short distances from the source. The 2011 Lead Infrastructure SIP Guidance notes that the lead constituent of PM would likely not travel far enough to affect Class I areas and that the visibility provisions of the CAA do not directly regulate lead. Lead stationary sources in Florida are located distances from Class I areas such that visibility impacts are negligible. In addition, Florida's Regional Haze SIP, which addresses visibility protection, was approved on August 29, 2013 (78 FR 53250). Accordingly, EPA has preliminarily determined that the Florida SIP meets the relevant visibility requirements.

110(a)(2)(D)(ii) – Interstate and International transport provisions: Chapters 62-204, 62-210, and 62-212, F.A.C. require that any new major source or major modification undergo PSD or NNSR permitting and thereby provide notification to other potentially affected federal, state, and local government agencies. EPA is unaware of any pending obligations for the State of Florida pursuant to sections 115 and 126. EPA has made the preliminary determination that Florida's SIP and practices are adequate for insuring compliance with the applicable requirements relating to interstate and international pollution abatement for the 2008 Lead NAAQS.

5. 110(a)(2)(E) – Adequate personnel, funding, and authority. Section 110(a)(2)(E) requires that each implementation plan provide (i) necessary assurances that the State will have adequate personnel, funding, and authority under state law to carry out its implementation plan, (ii) that the State comply with the requirements respecting State Boards pursuant to section 128 of the Act, and (iii) necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the State

has responsibility for ensuring adequate implementation of such plan provisions. EPA is proposing to approve Florida's SIP as meeting the requirements of sub-elements 110(a)(2)(E)(i) through (iii). EPA's rationale for today's proposal respecting sub-element (i) through (iii) is described in turn below.

To satisfy the requirements of sections 110(a)(2)(E)(i) and (iii), Florida's infrastructure SIP submission describes that rules regarding emissions standards general policies, a system of permits, and fee schedules for the review of plans, and other planning needs. 403.601 (2),F.S., 403.601(4), F.S., section 403 .182, F.S., are the statutes that Florida relies on to meet this element. As evidence of the adequacy of FL DEP's resources, EPA submitted a letter to Florida on March 6, 2015, outlining 105 grant commitments and the current status of these commitments for fiscal year 2014. The letter EPA submitted to Florida can be accessed at www.regulations.gov using Docket ID No. EPA-R04-OAR-2013-0040. Annually, states update these grant commitments based on current SIP requirements, air quality planning, and applicable requirements related to the NAAQS. Florida satisfactorily met all commitments agreed to in the Air Planning Agreement for fiscal year 2014, therefore Florida's grants were finalized and closed out. EPA has made the preliminary determination that Florida has adequate resources for implementation of the 2008 Lead NAAQS.

The section 128(a)(1) State Board requirements – as applicable to the infrastructure SIP pursuant to section 110(a)(2)(E)(ii) – provide that each SIP shall require that any board or body which approves permits or enforcement orders shall be subject to the described public interest and income restrictions therein. Subsection 128(a)(2), also pursuant to section 110(a)(2)(E)(ii), requires that any board or body, or the head of an executive agency with similar power to

approve permits or enforcement orders under the CAA, shall also be subject to conflict of interest disclosure requirements.

For purposes of section 128(a)(1), Florida has no boards or bodies with authority over air pollution permits or enforcement actions. Such matters are instead handled by an appointed Secretary. Appeals of final administrative orders and permits are available only through the judicial appellate process described at Florida Statute 120.68. As such, a “board or body” is not responsible for approving permits or enforcement orders in Florida, and the requirements of section 128(a)(1) are not applicable.

With respect to section 128(a)(2), FL DEP previously submitted the relevant provisions of Florida Statutes, specifically subsections 112.3143(4) and 112.3144, F.S., for incorporation into the Florida SIP in its infrastructure submittal for the 1997 ozone NAAQS. EPA approved these conflict of interest provisions for inclusion in the Florida SIP on July 30, 2012. *See* 77 FR 44485. These provisions of the Florida SIP are sufficient to satisfy the conflict of interest provisions applicable to the head of FL DEP and all public officers within the Department. Thus, EPA has made the preliminary determination that Florida’s SIP and practices are adequate for insuring compliance with the applicable requirements relating to state boards for the 2008 Lead NAAQS.

6. 110(a)(2)(F) – Stationary source monitoring system: Florida’s infrastructure SIP submission describes how the State establishes requirements for emissions compliance testing and utilizes emissions sampling and analysis. It further describes how the State ensures the quality of its data through observing emissions and monitoring operations. FL DEP uses these

data to track progress towards maintaining the NAAQS, develop control and maintenance strategies, identify sources and general emission levels, and determine compliance with emission regulations and additional EPA requirements. These requirements are provided in Chapters 62-204, *Air Pollution Control Provisions*; 62-210, F.A.C., *Stationary Sources – General Requirements*; 62-212, F.A.C., *Stationary Sources – Preconstruction Review*; 62-296, F.A.C., *Stationary Sources – Emissions Standards*; and 62-297, F.A.C., *Stationary Sources – Emissions Monitoring*.

Additionally, Florida is required to submit emissions data to EPA for purposes of the National Emissions Inventory (NEI). The NEI is EPA's central repository for air emissions data. EPA published the Air Emissions Reporting Rule (AERR) on December 5, 2008, which modified the requirements for collecting and reporting air emissions data (73 FR 76539). The AERR shortened the time states had to report emissions data from 17 to 12 months, giving states one calendar year to submit emissions data. All states are required to submit a comprehensive emissions inventory every three years and report emissions for certain larger sources annually through EPA's online Emissions Inventory System. States report emissions data for the six criteria pollutants and the precursors that form them – NO_x, sulfur dioxide, ammonia, Lead, carbon monoxide, particulate matter, and volatile organic compounds. Many states also voluntarily report emissions of hazardous air pollutants. Florida made its latest update to the 2013 NEI on December 24, 2014. EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through the website <http://www.epa.gov/ttn/chief/eiinformation.html>. EPA has made the preliminary determination that Florida's SIP and practices are adequate for the stationary source monitoring systems related

to the 2008 Lead NAAQS.

7. 110(a)(2)(G) – Emergency Powers: This section of the CAA requires that states demonstrate authority comparable with section 303 of the CAA and adequate contingency plans to implement such authority. This section of Florida’s infrastructure SIP submission identifies Florida Statutes subsections 403.131 and 120.569(2)(n), F.S which authorize DEP to “[s]eek injunctive relief to prevent irreparable injury to the air, waters, and property, including animal, plant, and aquatic life, of the state and to protect human health, safety, and welfare caused or threatened by any violation”; and to issue emergency orders to address immediate dangers to the public health, safety, or welfare. These statutes were incorporated into the SIP to address the requirements of section 110(a)(2)(G) of the CAA in an EPA action approving certain portions of Florida’s infrastructure SIP for the 1997 ozone NAAQS on July 30, 2012. *See* 77 FR 44485. EPA has made the preliminary determination that Florida’s SIP and practices are adequate for emergency powers related to the 2008 Lead NAAQS.

8. 110(a)(2)(H) – Future SIP revisions: FL DEP is responsible for adopting air quality rules and revising SIPs as needed to attain or maintain the NAAQS in Florida. Florida Statutes Subsection 403.061(35) grants FL DEP the broad authority to implement the CAA; also, subsection 403.061(9), F.S., which authorizes FL DEP to adopt a comprehensive program for the prevention, control, and abatement of pollution of the air of the state, and from time to time review and modify such programs as necessary. FL DEP has the ability and authority to respond to calls for SIP revisions, and has provided a number of SIP revisions over the years for implementation of the NAAQS. Florida has one nonattainment area for the 2008 Lead NAAQS in Hillsborough County related to the EnviroFocus Technologies, LLC facility. On June 29,

2012, FL DEP submitted the required attainment demonstration for this Area. EPA approved this SIP revision on April 16, 2015. *See* 80 FR 6485. EPA has made the preliminary determination that Florida's SIP and practices adequately demonstrate a commitment to provide future SIP revisions related to the 2008 Lead NAAQS, when necessary.

9. 110(a)(2)(J): EPA is proposing to approve Florida's infrastructure SIP for the 2008 Lead NAAQS with respect to the general requirement in section 110(a)(2)(J) to include a program in the SIP that provides for meeting the applicable consultation requirements of section 121, the public notification requirements of section 127; and visibility protection requirements of part C of the Act. With respect to Florida's infrastructure SIP submission related to the preconstruction PSD permitting, EPA approved this sub-element of 110(a)(2)(J) on March 18, 2015, and thus is not proposing any action today regarding these requirements. *See* 80 FR 14019. EPA's rationale for its proposed action regarding applicable consultation requirements of section 121, the public notification requirements of section 127, and visibility protection requirements is described below.

110(a)(2)(J) (121 consultation) Consultation with government officials: Section 110(a)(2)(J) of the CAA requires states to provide a process for consultation with local governments, designated organizations and federal land managers (FLMs) carrying out NAAQS implementation requirements pursuant to section 121 relative to consultation. Chapters 62-204, F.A.C., *Air Pollution Control Provisions*; 62-210, F.A.C., *Stationary Sources – General Requirements*, and 62-212, F.A.C., *Stationary Sources – Preconstruction Review*, as well as Florida's Regional Haze Implementation Plan (which allows for consultation between appropriate state, local, and tribal air pollution control agencies as well as the corresponding

Federal Land Managers), provide for consultation with government officials whose jurisdictions might be affected by SIP development activities. Florida adopted state-wide consultation procedures for the implementation of transportation conformity. These consultation procedures include considerations associated with the development of mobile inventories for SIPs.

Implementation of transportation conformity as outlined in the consultation procedures requires FL DEP to consult with federal, state and local transportation and air quality agency officials on the development of motor vehicle emissions budgets. EPA approved Florida's consultation procedures on August 11, 2003. *See* 68 FR 47468. EPA has made the preliminary determination that Florida's SIP and practices adequately demonstrate that the State meets applicable requirements related to consultation with government officials related to the 2008 Lead NAAQS, when necessary.

110(a)(2)(J) (127 public notification) Public notification: To meet the public notification requirements of section 110(a)(2)(J), Florida has state statutes, subsections 403.061(20) *Department; powers and duties* which provides FL DEP with the authority "to control and prohibit pollution of air and water in accordance with the law and rules adopted and promulgated by it and, for this purpose, to: collect and disseminate information and conduct educational and training programs relating to pollution." Along with 403.061 (21), F.S. which states that the FL DEP also can advise, consult, cooperate, and enter into agreements with other agencies of the state, the Federal Government, other states, interstate agencies, groups, political subdivisions, and industries affected by the provisions of this act, rules, or policies of the department. Chapters 62-204, F.A.C., *Air Pollution Control Provisions*; 62-210, F.A.C., *Stationary Sources – General Requirements*, and 62-212, F.A.C., *Stationary Sources – Preconstruction Review* also

include public notice requirements for the State's permitting program. Additionally, Notification to the public of instances or areas exceeding the NAAQS and associated health effects is provided through implementation of the Air Quality Index reporting system in all required areas. EPA has made the preliminary determination that Florida's SIP and practices adequately demonstrate the State's ability to provide public notification related to the 2008 Lead NAAQS when necessary. Accordingly, EPA is proposing to approve Florida's infrastructure SIP submission with respect to section 110(a)(2)(J) public notification.

110(a)(2)(J) Visibility Protection: The 2011 Lead Infrastructure SIP Guidance notes that EPA does not generally treat the visibility protection aspects of section 110(a)(2)(J) as applicable for purposes of the infrastructure SIP approval process. EPA recognizes that states are subject to visibility protection and regional haze program requirements under Part C of the Act (which includes sections 169A and 169B). However, in the event of the establishment of a new primary NAAQS, the visibility protection and regional haze program requirements under part C do not change. Thus, EPA concludes there are no new applicable visibility protection obligations under section 110(a)(2)(J) as a result of the 2008 Lead NAAQS, and as such, EPA is proposing to approve section 110(a)(2)(J) of FL DEP's infrastructure SIP submission as it relates to visibility protection.

10. 110(a)(2)(K) – Air quality and modeling/data: Section 110(a)(2)(K) of the CAA requires that SIPs provide for performing air quality modeling so that effects on air quality of emissions from NAAQS pollutants can be predicted and submission of such data to the USEPA can be made. Chapter 62-204.800, F.A.C., *Air Pollution Control Provisions*; 62-210, F.A.C.,

Stationary Sources – General Requirements, and 62-212, F.A.C., *Stationary Sources – Preconstruction Review*, incorporates by reference 40 CFR 52.21(l), which specifies that air modeling be conducted in accordance with 40 CFR part 51, Appendix W “Guideline on Air Quality Models.” These regulations demonstrate that Florida has the authority to provide relevant data for the purpose of predicting the effect on ambient air quality of the 2008 Lead NAAQS. Additionally, Florida supports a regional effort to coordinate the development of emissions inventories and conduct regional modeling for several NAAQS, including the 2008 Lead NAAQS, for the Southeastern states. Taken as a whole, Florida’s air quality regulations demonstrate that FL DEP has the authority to provide relevant data for the purpose of predicting the effect on ambient air quality of the 2008 Lead NAAQS. EPA has made the preliminary determination that Florida’s SIP and practices adequately demonstrate the State’s ability to provide for air quality and modeling, along with analysis of the associated data, related to the 2008 Lead NAAQS when necessary.

11. 110(a)(2)(L) – Permitting fees: This element necessitates that the SIP require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under the CAA, a fee sufficient to cover (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator’s approval of a fee program under title V. Florida statute subsection

403.087(6)(a), F.S., *Permit Fees* directs FL DEP to require a processing fee in an amount sufficient for the reasonable cost of reviewing and acting upon PSD and NNSR permits. The local air program costs are covered by the Air Pollution Control Trust Fund which is comprised of various funding sources. Additionally, Florida has a fully approved title V operating permit program at subsection 403.0872, F.S., *Annual Emissions Fee*, and Chapter 62.213, F.A.C. *Operation Permits For Major Sources of Air Pollution* that covers the cost of implementation and enforcement of PSD and NNSR permits after they have been issued. EPA has made the preliminary determination that Florida's statutes and practices adequately provide for permitting fees related to the 2008 Lead NAAQS, when necessary.

12. 110(a)(2)(M) – Consultation/participation by affected local entities: This element requires states to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP. Chapter 62-204, *Air Pollution Control Provisions*, requires that SIPs be submitted in accordance with 40 CFR part 51, Subpart F. Florida statute subsection 403.061(21), F.S. authorizes FDEP to “advise, consult, cooperate and enter into agreements with other agencies of the state, the Federal Government, other states, interstate agencies, groups, political subdivisions, and industries affected by the provisions of this act, rules, or policies of the department.” EPA has made the preliminary determination that Florida's SIP and practices adequately demonstrate consultation with affected local entities related to the 2008 Lead NAAQS, when necessary.

V. Proposed Action

With the exception of the PSD permitting requirements for major sources contained in sections 110(a)(2)(C), prong 3 of D(i) and (J), EPA is proposing to approve Florida's October 14, 2011, SIP submission to incorporate provisions into the Florida SIP to address infrastructure requirements for the 2008 Lead NAAQS. EPA is proposing to approve these portions of Florida's infrastructure submission for the 2008 Lead NAAQS because this submission is consistent with section 110 of the CAA.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The Florida SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference,
Intergovernmental relations, Lead, and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 12, 2015.

Heather McTeer Toney,

Regional Administrator,
Region 4.

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